

EXHIBIT B



Transgender Student Guidance for School Districts

The New Jersey Law Against Discrimination ("NJLAD"), *N.J.S.A. 10:5-12(11)(f)*, generally makes it unlawful for schools to subject individuals to differential treatment based on race, creed, color, national origin, ancestry, marital status, domestic partnership or civil union status, sex, affectional or sexual orientation, gender identity or expression, disability or nationality.

Title IX of the Education Amendments of 1972 ("Title IX") specifically prohibits discrimination on the basis of sex in federally-funded education programs and activities [20 U.S.C. § 1681(a)].

N.J.S.A. 18A:36-41 directs the Commissioner of the New Jersey Department of Education to establish guidelines to provide direction for schools in addressing common issues concerning the needs of transgender students, and to assist schools in establishing policies and procedures that ensure a supportive and nondiscriminatory environment for transgender students.

This guidance was prepared by the New Jersey Department of Education after a review of policies and guidance from other states and organizations, and in consultation with educators, counselors, school psychologists, advocates, and parents. The intended purpose of this guidance is to help school and district administrators take steps to create an inclusive environment in which transgender and gender nonconforming students feel safe and supported, and to ensure that each school provides equal educational opportunities for all students, in compliance with *N.J.A.C. 6A:7-1.1 et seq.*

Communication with the student is paramount. Schools and school districts are encouraged to communicate openly, albeit confidentially, with students regarding their transgender status or gender identity. Proper communication with the student will ensure that appropriate steps are taken to determine a student's preferences and address potential privacy concerns and associated risks to the student's well-being.

1. Definitions

A safe and supportive environment within a school begins with understanding and respect. Students, teachers, and administrators should be provided with common terminology associated with gender identity. Although these terms are commonly used by advocacy and human rights groups, students may prefer other terms to describe their gender identity, appearance, or behavior.

- **Gender Identity** means a person's internal, deeply held sense of gender. All people have a gender identity, not just transgender people. For transgender people, the individual's internal gender identity is not the same as the gender assigned at birth.
- **Gender Expression** means external manifestations of gender, expressed through a person's name, pronouns, clothing, haircut, behavior, voice, and/or body characteristics. Society

identifies these cues as masculine and feminine, although what is considered masculine or feminine changes over time and varies by culture.

- **Assigned Sex at Birth (ASAB)** refers to the biological sex designation recorded on a person's birth certificate upon the initial issuance of that certificate, should such a record be provided at birth.
- **Gender Assigned at Birth** refers to the gender a child is assigned at birth or assumed to be, based on their biological sex assigned at birth.
- **Sexual Orientation** describes a person's enduring physical, romantic, and/or emotional attraction to another person. Gender identity and sexual orientation are not the same. A transgender person may be straight, lesbian, gay, bisexual, or asexual. For example, a person who transitions from male to female and is attracted solely to men may identify as a straight woman.
- **Transgender** is a term for an individual whose gender identity and/or gender expression differs from those typically associated with the sex and gender assigned at birth.
- **Transition** is the process by which a transgender person recognizes that their authentic gender identity is not the same as the gender assigned at birth, and develops a more affirming gender expression that feels authentic. Some individuals socially transition, for example, through dress, use of names and/or pronouns. Some individuals may undergo a physical transition, which might include hormone treatments and surgery. School district personnel should avoid the phrase "sex change," as it is an inaccurate description of the transition process; the process is more accurately described as "gender-confirming."
- **LGBTQ** is an acronym for "lesbian, gay, bisexual, transgender, and queer/questioning."
- **Gender nonconforming** describes a person whose gender expression does not conform to the gender expectations of their family or community. Gender nonconformity is not necessarily an indication that a youth is transgender; many non-transgender youth do not conform to stereotypical expectations.
- **Gender Expansive/Gender Diverse/Gender Fluid/Gender Non-Binary/Agender/Gender Queer** are terms that convey a wider, more flexible range of gender identity and/or expression than typically associated with the binary gender system. For example, students who identify as gender queer or gender fluid might not identify as boys or girls; for these students, the non-binary gender identity functions as the student's gender identity.
- **Cisgender** refers to individuals whose gender identity, expression, or behavior conforms with those typically associated with their sex assigned at birth.

GLAAD, The Human Rights Campaign, and PFLAG also provide comprehensive reference guides on terminology. (*See Section 8, Resources*)

It is recommended that school personnel discuss with the student the terminology and pronouns each student has chosen.

2. Student-Centered Approach

A school district shall accept a student's asserted gender identity; parental consent is not required. Further, a student need not meet any threshold diagnosis or treatment requirements to have his or her gender identity recognized and respected by the district, school or school personnel. Nor is a

legal or court-ordered name change required. There is no affirmative duty for any school district personnel to notify a student's parent or guardian of the student's gender identity or expression.

There may be instances where a parent or guardian of a minor student disagrees with the student regarding the name and pronoun to be used at school and in the student's education records. A parent or guardian may object to the minor student's name change request. School districts should consult their board attorney regarding the minor student's civil rights and protections under the NJLAD. Staff should continue to refer to the student in accordance with the student's chosen name and pronoun at school and may consider providing resource information regarding family counseling and support services outside of the school district.

School districts should be mindful of disputes between minor students and parent/guardians concerning the student's gender identity or expression. Many support resources are available through advocacy groups and resources from the [New Jersey Department of Children and Families](#) and New Jersey Department of Education's "[Child Abuse, Neglect, and Missing Children](#)" webpage.

One of the most important factors in ensuring a safe and supportive environment for transgender students is communication between the school/district and student. School district personnel should have an open, but confidential discussion with the student to ascertain the student's preference on matters such as chosen name, chosen pronoun to use, and parental communications.

- School districts shall ensure that a transgender student is addressed at school by the name and pronoun chosen by the student, regardless of whether a legal name change or change in official school records has occurred.
- School districts shall issue school documentation for a transgender student, such as student identification cards, in the name chosen by the student.
- A transgender student shall be allowed to dress in accordance with the student's gender identity.

School districts should discuss with the student, and any other individuals at the student's request, the risks associated with the student's transgender status being inadvertently disclosed. For example, school districts should inform the student that the transgender status may be revealed due to other students' discussions at home. The school district should work with the transgender student to ensure awareness of activities and events that may inadvertently disclose the transgender student's status.

3. Safe and Supportive Environment

Each school district shall develop policies and procedures to ensure that its schools provide a safe and supportive learning environment that is free from discrimination and harassment for transgender students, including students going through a gender transition. Gender-based policies, rules, and practices can have the effect of marginalizing, stigmatizing, and excluding students, whether they are gender nonconforming or not. All school districts shall review and update their

existing policies and procedures, including those regarding classroom activities, school ceremonies, school photographs, and dress codes, to verify that transgender students are not excluded. In addition, school districts shall take the following steps to establish and maintain a nondiscriminatory environment for all students, including transgender and transitioning students:

- School districts must comply with *N.J.S.A. 18A:37-15* and *N.J.A.C. 6A:16-7.7*, which prohibit harassment, intimidation and bullying, and require that each district board of education develop, adopt, and implement a policy prohibiting harassment, intimidation, or bullying on school property, at a school-sponsored function or on a school bus. If harassment based on gender identity creates a hostile environment, the school must take prompt and effective steps to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.
- School districts should provide staff training on sensitivity and respect towards transgender students.
- Social and Emotional Learning (SEL) concepts should be incorporated into school culture and curricula.
 - Resources on SEL can be found on the Department of Education's [Social and Emotion Learning webpage](https://www.state.nj.us/education/students/safety/sandp/sel/) (<https://www.state.nj.us/education/students/safety/sandp/sel/>)
- School districts may seek a variety of professionals, including counselors and school psychologists, to provide emotional supports for all students who demonstrate a need. School districts shall ensure that school counselors are knowledgeable regarding issues and concerns relevant to transgender students, students facing other gender identity issues, or students who may be transitioning.
- Dress codes should not be enforced more strictly for transgender and gender nonconforming students than for other students.
- School districts shall honor and recognize a student's asserted gender identity, and shall not require any documentation or evidence in any form, including diagnosis, treatment, or legal name change.
- A school's obligation to ensure nondiscrimination on the basis of gender identity requires schools to provide transgender students equal access to educational programs and activities, even in circumstances in which other students, parents, or community members raise objections or concerns.

4. Confidentiality and Privacy

School personnel may not disclose information that may reveal a student's transgender status except as allowed by law. Schools are advised to work with the student to create an appropriate confidentiality plan regarding the student's transgender or transitioning status.

A school district shall keep confidential a current, new, or prospective student's transgender status. Schools should address the student using a chosen name; the student's birth name should be kept confidential by school and district staff (*See Section 5, School Records*).

Due to a specific and compelling need, such as the health and safety of a student or an incident of bias-related crime, a school district may be obligated to disclose a student's status. The school district should inform the student that the school intends to disclose the student's transgender status for the student's protection and well-being. Prior to disclosure, the student should be given the opportunity to personally disclose that information. School districts should make every effort to ensure that any disclosure is made in a way that reduces or eliminates the risk of re-disclosure and protects the transgender student from further harassment. Those measures may include the facilitation of counseling for the student and the student's family to facilitate the family's acceptance and support of the student's transgender status.

During a Harassment, Intimidation, or Bullying investigation a school district is obligated to develop a procedure to report, verbally and in writing, an act of harassment, intimidation, and bullying (HIB) committed by an adult or youth against a student, pursuant to *N.J.A.C. 6A:16-7.7(a)2viii*. In this instance, the school district should inform the student of the school's obligation to report the findings of the HIB investigation pursuant to *N.J.S.A. 18A:37-15(d)*, which permits the parents or guardians of the students who are parties to the investigation to receive information about the investigation in accordance with federal and state law and regulation. Under HIB requirements, parents or guardians are entitled to know the nature of the investigation, whether the district found evidence of harassment, intimidation, or bullying, or whether disciplinary action was imposed or services provided to address the incident of harassment, intimidation, or bullying.

School district officials shall take into account the circumstances of the incident when providing notification to parents or guardians of all students involved in the reported harassment, intimidation, or bullying incident and when conveying the nature of the incident, including the actual or perceived protected category motivating the alleged offense, pursuant to *N.J.A.C. 6A:16-7.7(a)2viii(2)*.

Disclosure of personally identifiable information from a student's education record to other school officials within the district, whom the district has determined have a legitimate educational interest in the information, may be permissible under FERPA (34 C.F.R. § 99.31(a)(1)). The school district shall make a concerted effort to ensure that school officials obtain access to only those education records in which they have legitimate educational interests.

- School districts shall comply with all laws and regulations regarding the confidentiality of student records and student privacy, including the requirements set forth at 20 U.S.C. § 1232g, Family Educational Rights and Privacy Act; 34 CFR Part 99, Family Educational Rights and Privacy; 20 U.S.C. § 1232h, Protection of Pupil Rights; 34 CFR Part 98, Student Rights in Research, Experimental Programs, and Testing; *P.L.* 104-191, Health Insurance Portability and Accountability Act; 45 CFR Part 160, General Administrative Requirements; 20 U.S.C. § 7917, Transfer of school disciplinary records; 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; *N.J.S.A. 18A:40A-7.1*, Confidentiality of certain information provided by pupils, exceptions; *N.J.A.C. 6A:16-3.2*, Confidentiality of student alcohol and other drug information; *N.J.S.A. 18A:36-19*, Pupil records, creation, maintenance and

retention, security and access, regulations, nonliability; *N.J.S.A. 2A:4A-60*, Disclosure of juvenile information, penalties for disclosure; *N.J.A.C. 6A:32-7*, Student Records; *N.J.A.C. 6A:14-2.9*, Student records; as well as all other existing Federal and State laws and rules pertaining to student records and confidentiality.

5. School records

If a student has expressed a preference to be called by a name other than their birth name, permanent student records containing the student's birth name should be kept in a separate, confidential file. This file should only be shared with appropriate school staff after consultation with a student. A separate file containing records bearing the student's chosen name may also be kept. If the student has previously been known at school or in school records by a birth name, the principal should direct school personnel to use the student's chosen name and not the student's birth name. To ensure consistency among teachers, school administrators, substitute teachers and other staff, every effort should be made to immediately update student education records (for example, attendance records, transcripts, Individualized Education Programs, etc.) with the student's chosen name and gender pronouns, consistent with the student's gender identity and expression, and not circulate records with the student's birth name, unless directed by the student.

- Districts shall report to the New Jersey Department of Education through NJ SMART a student's name or gender based upon that student's chosen name and corresponding gender identity. Changing the name or gender identity from what was reported in previous years will not affect the reliability of the data reported.
- If a district changes a student's name or gender identity, it must also maintain locally a separate record reflecting the student's legal name and sex assigned at birth until receipt of documentation of a legal change of name or gender.

6. Activities

With respect to gender-segregated classes or athletic activities, including intramural and interscholastic athletics, all students must be allowed to participate in a manner consistent with their gender identity.

School districts shall:

- Provide transgender students with the same opportunities to participate in physical education as other students in accordance with their gender identity;
- Permit a transgender student to participate in gender-segregated school activities in accordance with the student's gender identity;
- Permit and support the formation of student clubs or programs regarding issues related to lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ) youth; and
- Offer support in the creation of peer led educational groups.

7. Use of Facilities

All students are entitled to have access to restrooms, locker rooms and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities.

In all cases, the school principal must work with the student and staff so all parties are aware of facility policies and understand that the student may access the restroom, locker room, and changing facility that corresponds to the student's gender identity. While some transgender students will want that arrangement, others may be uncomfortable with it. Transgender students who are uncomfortable using a sex-segregated restroom should be provided with a safe and adequate alternative, such as a single "unisex" restroom or the nurse's restroom. Similarly, some transgender students may be uncomfortable using the changing facilities that correspond to the student's gender identity. Non-transgender students should also be afforded the option to use a private facility, such as a unisex facility or the nurse's restroom, should they feel uncomfortable.

- School districts shall allow a transgender student to use a restroom or locker room based on the student's gender identity.
- Reasonable alternative arrangements shall be made if needed to ensure a student's safety and comfort. This direction for accommodations should come from the student.

8. Resources

The Department has sourced a variety of resources regarding professional development opportunities for school district personnel as well as developmentally appropriate information for students regarding LGBTQ issues. These resources can be found here: <https://nj.gov/education/students/safety/sandp/transgender/>

Please be advised that these resources are provided for informational purposes only. Neither the New Jersey Department of Education, nor its officers, employees, nor agents, specifically endorse these resources or the entity hosting these resources. Please note that the New Jersey Department of Education has not validated the materials related to these resources.

For additional information or if you have any questions regarding this guidance, please contact the Division of Student Services at schoolclimate@doe.nj.gov.